

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed April 11, 2008. At the time of the Final Office Action, Claims 10-20 were pending in this Application. Claims 10-20 were rejected. Claims 10 and 20 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 10 and 20 were rejected by the Examiner under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicants amend Claims 10 and 20 to overcome these rejections and respectfully request full allowance of Claims 10 and 20 as amended.

Rejections under 35 U.S.C. §103

Claims 10-13 and 15-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,790,516 issued to Gudmundson et al. ("Gudmundson") and further in view of U.S. Patent 6,463,105 issued to Ramesh ("Ramesh"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gudmundson in view of Ramesh, and further in view of U.S. Patent 4,513,385 issued to Muri ("Muri"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references,

however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Applicant amended the independent claims to include the limitation that the subset includes sub-carrier bands of the at least two subscribers that are adjacent. this limitation is disclosed in the originally submitted specification on page 3, lines 6-19 and page 8, lines 15-21.

Thus, according to the present independent claim, in an uplink transmission, the device monitors which sub-carrier bands contribute to interference in a base station which are the sub-carriers that are adjacent with those of another subscriber.

As correctly stated by the Examiner, *Gudmundson* does not disclose "monitoring a transmission characteristic." The term transmission characteristic as claimed in the independent claims includes the characteristic of which sub-carriers of a subscriber contribute to adjacent sub-carrier interference. Applicant amended the independent claims to more clearly define this relationship. According to *Gudmundson* all sub-carriers are manipulated by means of pulseshaping regardless of what the transmission characteristics are. Therefore, a person skilled in the art would reduce the number of sub-carriers to a subset as defined in the independent claims. Because *Gudmundson* teaches to manipulate all sub-carriers and not only a subset the system of *Gudmundson* does not need to monitor any transmission characteristic.

Ramesh does not add anything to *Gudmundson* with respect to this feature. Because the selective manipulation of certain sub-carrier bands is neither disclosed in *Gudmundson* or *Ramesh* a combination of the two references cannot render the present independent claims obvious. Hence, Applicant believes that all pending independent claims are allowable in view of the cited prior art. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

Request for Continued Examination (RCE)

Applicants respectfully submit herewith a Request for Continued Examination (RCE) Transmittal. Applicants authorize the Commissioner to charge the amount of \$810.00 for the required filing fee to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **31625**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **31625**. All telephone calls should be directed to Andreas Grubert at 512.322.2545. A Revocation and Power of Attorney is filed herewith.

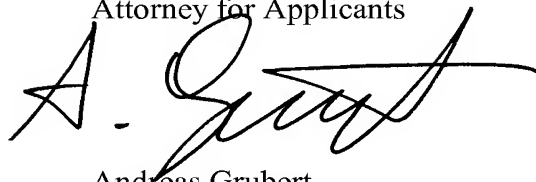
CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no other fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants

A handwritten signature in black ink, appearing to read 'A. Grubert', with a stylized flourish at the end.

Andreas Grubert
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Date: July 11, 2008

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